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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91224341
Party	Defendant Old Toledo Brands, Inc.
Correspondence Address	ELLIOT L SCHAEFFER SCHAEFFER & ASSOCIATES LLP 845 3RD AVE FL 11 NEW YORK, NY 10022-6601 UNITED STATES lmiller@fedkas.com, eschaeffer@fedkas.com, kvilleneuve@fedkas.com
Submission	Motion to Amend/Amended Answer or Counterclaim
Filer's Name	Larry Miller
Filer's e-mail	lmiller@fedkas.com, CMashel@fedkas.com
Signature	/Larry Miller/
Date	01/21/2016
Attachments	Amend91224341.pdf(193020 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 85249014
Published in the *Official Gazette* August 11, 2015

-----X	
UNION PACIFIC RAILROAD COMPANY)
)
Opposer,)
)
v.)
)
OLD TOLEDO BRANDS, INC.,)
)
Applicant.)
)
-----X	

Opposition No. 91224341

MOTION TO FILE AMENDED ANSWER AND AFFIRMATIVE DEFENSES

Applicant in the above-referenced proceeding, Old Toledo Brands, Inc. ("Applicant"), by and through its undersigned attorneys, hereby requests that it be permitted to amend its answer to the Opposition herein, pursuant to the Federal Rules of Civil Procedure, Rule 15(b). Opposer has consented to said amendment, which is being filed along with the instant motion.

Respectfully submitted,

FEDER KASZOVITZ LLP
SCHAEFFER & ASSOCIATES LLP
Attorneys for Petitioner
Old Toledo Brands, Inc.

By: /s/Larry Miller
Larry Miller

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Dated: January 21, 2016

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v.)	Opposition No. 91224341
)	
OLD TOLEDO BRANDS, INC.,)	
)	
)	
Applicant.)	
)	
-----	x	

AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO NOTICE OF OPPOSITION

Applicant in the above-referenced proceeding, Old Toledo Brands, Inc. ("Applicant"), by and through its undersigned attorneys, hereby answers UNION PACIFIC RAILROAD COMPANY's ("Opposer") Notice of Opposition as follows:

1. Applicant admits the allegations contained in Paragraph 1 of the Notice of Opposition.
2. Applicant admits the allegations contained in Paragraph 2 of the Notice of Opposition.
3. Applicant admits the allegations contained in Paragraph 3 of the Notice of Opposition.
4. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 4 of the Notice of Opposition, and therefore denies those

allegations and demands strict proof thereof.

5. Applicant admits that attached as Exhibit A to the Notice of Opposition are printouts of certain documents purportedly obtained from the Trademark Office's records. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the other allegations of Paragraph 5 of the Notice of Opposition, and therefore denies those allegations and demands strict proof thereof.

6. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 6 of the Notice of Opposition, and therefore denies those allegations and demands strict proof thereof.

7. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 7 of the Notice of Opposition, and therefore denies those allegations and demands strict proof thereof.

8. Applicant admits that attached as Exhibit B to the Notice of Opposition are purported specimens of Opposer's goods; Applicant lacks knowledge and information sufficient to form a belief as to the truth of the other allegations of Paragraph 8 of the Notice of Opposition, and therefore denies those allegations and demands strict proof thereof.

9. Applicant denies the allegations contained in Paragraph 9 of the Notice of Opposition and demands strict proof thereof.

10. Applicant denies the allegations of Paragraph 10 of the Notice of Opposition and demands strict proof thereof.

11. Applicant denies the allegations of Paragraph 11 of the Notice of Opposition and demands strict proof thereof.

12. Applicant denies the allegations of Paragraph 12 of the Notice of Opposition and

demands strict proof thereof.

13. Applicant denies the allegations of Paragraph 13 of the Notice of Opposition and demands strict proof thereof.

14. Applicant admits the allegations contained in Paragraph 14 of the Notice of Opposition.

15. Applicant denies the allegations of Paragraph 15 of the Notice of Opposition and demands strict proof thereof.

16. Applicant denies the allegations of Paragraph 16 of the Notice of Opposition and demands strict proof thereof.

17. Applicant avers that Paragraph 17 is not a proper allegation, but to the extent that it is, Applicant denies the allegations of Paragraph 17 of the Notice of Opposition and denies that Opposer is entitled to the relief sought and demands strict proof thereof.

To the extent that any Paragraph or subpart of any allegation in the Notice of Opposition has inadvertently not been answered, it is herewith denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Notice of Opposition fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Opposer's claims are barred by waiver or estoppel or acquiescence or laches.

THIRD AFFIRMATIVE DEFENSE

Opposer's claims are barred by reason of the existence of numerous third party registrations

as well as trade names, business names, and common law uses of marks, words, or designations incorporating or consisting of the letters UP. As such, Opposer does not hold any exclusivity in use or in registration of a UP mark, which is a fairly common element appearing in trademarks, including marks covering clothing products and related retail store services. Opposer's coexistence with such third-party marks constitutes an admission on behalf of Opposer that it can coexist with Applicant's marks opposed herein.

FOURTH AFFIRMATIVE DEFENSE

There is no likelihood of confusion, mistake, or deception between Opposer's asserted marks and Applicant's mark because no prospective purchaser of Applicant's goods would be confused into thinking that its products are sponsored, endorsed by or manufactured by Opposer.

FIFTH AFFIRMATIVE DEFENSE

The goods of interest to the parties are vastly different, move in different marketing and sales channels, and are offered at different price points, such that no likelihood of confusion exists.

SIXTH AFFIRMATIVE DEFENSE

Various paragraphs of the Notice of Opposition do not comply with Fed. R. Civ. P. 8(a) and (e), which require a "short and plain statement" of the claims showing that Opposer is entitled to relief and 37 C.F.R. § 2.104(a) and T.B.M.P. § 309.03 (a) (2), which require "a short and plain statement of the reasons why Opposer believes it would be damaged by the registration of the mark at issue. As such Applicant is not required to separately admit or deny each of the allegations contained therein.

ADDITIONAL DEFENSES RESERVED

Applicant reserves the right to raise additional defenses to the claims alleged by Opposer based upon information learned or obtained through investigation or discovery.

WHEREFORE, Applicant prays that this Opposition be in all things denied and that Applicant's mark proceed to allowance.

DATED: January 21, 2016

Respectfully submitted,

FEDER KASZOVITZ LLP
SCHAEFFER & ASSOCIATES LLP
Attorneys for Petitioner
Old Toledo Brands, Inc.

By: /s/Larry Miller
Larry Miller

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing (1) MOTION TO AMEND ANSWER
AND (2) AMENDED ANSWER TO NOTICE OF OPPOSITION was served on Opposer this
21st day of January 2016 by sending the same via first-class mail, postage prepaid, to:

Blake R. Loper
Union Pacific Railroad Company
1400 Douglas St., MS 1580
Omaha, NE 68179

Larry Miller